

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MANUEL M. SOARES,
CDCR #F-39579,

Plaintiff,

vs.

D. PARAMO, et al.,

Defendants.

Case No.: 3:13-cv-2971-BTM-RBB

**ORDER GRANTING REQUEST TO
RECALL PLAINTIFF'S PREVIOUS
MOTION FOR SUMMARY
JUDGMENT AND SETTING
BRIEFING SCHEDULE**

[ECF No. 88]

Currently pending before the Court is Defendants' Motion for Summary Judgment (ECF No. 84), set for hearing without oral argument pursuant to S.D. Cal. CivLR 7.1(d)(1) on Friday, November 4, 2016.

On September 13, 2016, the Court provided Plaintiff, a prisoner at the California Health Care Facility in Stockton, California, with notice of the requirements for opposing summary judgment pursuant to *Klinge v. Eikenberry*, 849 409 (9th Cir. 1988) and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc) (ECF No. 85). Plaintiff's opposition is due October 21, 2016; Defendants' Reply is due October 28, 2016. (*Id.* at 2.)

On September 21, 2016, Plaintiff filed a "Notice to Recall" his own previously filed Motion for Summary Judgment (ECF No. 88). In this Notice, Plaintiff asks the Court to "recall" the Motion for Summary Judgment he first filed on March 15, 2016 (ECF No. 55), but before the close of discovery. The Court previously denied Plaintiff's

1 Motion for Summary Judgment without prejudice as premature on May 25, 2016, when it
 2 granted Plaintiff's subsequently filed Motion for leave to amend and/or join additional
 3 parties his pleadings (ECF No. 61).¹

4 Instead of filing a new Motion for Summary Judgment, Plaintiff now asks the
 5 Court to decide his previously-filed Motion on the merits as it was originally submitted
 6 before the September 12, 2016 cut-off date, and to take it under submission together with
 7 Defendants' Motion for Summary Judgment (ECF No. 88).


8 **Conclusion and Order**

9 Good cause appearing, the Court **GRANTS** Plaintiff's request (ECF No. 88) to
 10 renew his previously filed Motion for Summary Judgment (ECF No. 55).

11 The Court will consider Plaintiff's Motion together with Defendants' Motion (ECF
 12 No. 84), currently set for hearing as submitted and without oral argument on **November**
 13 **4, 2016**. Defendants may file an Opposition to Plaintiff's Motion (ECF No. 55) on or
 14 before **Friday, October 21, 2016**.² Plaintiff may file a Reply to Defendants' Opposition
 15 on or before **October 28, 2016**.

16 **IT IS SO ORDERED.**

17 Dated: October 4, 2016

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 19 Barry Ted Moskowitz, Chief Judge
 20 United States District Court

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 22 ¹ Plaintiff later attempted to withdraw his Motion to Join/Amend, indicating that he instead
 23 intended to stand on his original pleadings (ECF No. 67). Because the Court had already
 24 granted the Motion Plaintiff sought to withdraw, it denied his motion to withdraw as moot,
 25 and affirmed that the dates and deadlines set out in Judge Brooks' October 9, 2015
 26 Scheduling Order would remain in effect (ECF No. 68). Pursuant to that Order, "[a]ll other
 pretrial motions [were to] be filed by **September 12, 2016**." (ECF No. 43 at 3 ¶ 8.)

27 ² Plaintiff is reminded that he must also file his own Opposition to Defendants' Motion for
 28 Summary Judgment (ECF No. 84) on or before **October 21, 2016**, as set forth in the
 Court's *Klinge / Rand* Order (ECF No. 85).